

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EL AMIN MUHAMMAD,

Plaintiff,

CASE NO. 1:16-CV-1466

v.

HON. ROBERT J. JONKER

KYLE A. NEHER,

Defendant.

**ORDER AFFIRMING MAGISTRATE JUDGE’S DECISION and
APPROVING AND ADOPTING REPORT AND RECOMMENDATION**

1. Appeal of Magistrate Judge’s Decision

Magistrate Judge Kent issued orders (ECF Nos. 25, 26) striking Plaintiff’s petitions and motions (ECF Nos. 18 and 22) as improvidently filed and denying plaintiff’s motions (ECF Nos. 10 and 14) as improvidently filed. Plaintiff appeals the Magistrate Judge’s decisions. (ECF No. 32.)¹ Plaintiff’s appeal lacks merit.

In considering an appeal of a magistrate judge’s ruling on a nondispositive pretrial motion, the Court applies a “clearly erroneous or contrary to law” standard of review. *United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001) (citing *United States v. Raddatz*, 447 U.S. 667, 673 (1980)); accord *Brown v. Wesley’s Quaker Maid, Inc.*, 771 F.2d 952, 954 (6th Cir. 1985) (citing 28 U.S.C. § 636(b)(1)(a)); see also FED. R. CIV. P. 72(a) (District judge must consider timely objections to nondispositive pretrial orders of magistrate judge and modify or set aside any part of order that

¹Plaintiff’s filing is entitled “Petition for relief from a Judgment or Order.” (ECF No. 32.) The Court construes this filing as an appeal of Magistrate Judge’s decisions on nondispositive pre-trial motions.

is clearly erroneous or is contrary to law.) A finding is “clearly erroneous” when ““the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.”” *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 573 (1985) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

The Court finds no error in the Magistrate Judge’s decisions. To the contrary, the Court finds the Magistrate Judge’s Orders entirely proper. The Orders are factually sound and legally correct. Plaintiff’s appeal lacks merit. Petitioner’s appeal (ECF No. 32) is **OVERRULED**.

2. Objections to Report and Recommendation

The Court has reviewed Magistrate Judge Kent’s Report and Recommendation in this matter (ECF No. 27) and Plaintiff’s Objections to the Report and Recommendation (ECF No. 31). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

[t]he district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the

Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends that the Court dismiss the action as frivolous under FED. R. CIV. P. 12(b)(1). Plaintiff's Objections fail to come to grips with the Report and Recommendation in any meaningful way. Nothing in Plaintiff's Objections changes the fundamental analysis. The Court agrees with the Magistrate Judge's conclusion that the only federal claim must be dismissed as frivolous under Rule 12(b)(1) and because it fails on the merits in any event. To the extent non-federal claims remain, they belong in state court. *See* 28 U.S.C. § 1367(c)(3).

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 27) is approved and adopted as the opinion of the Court to the extent consistent with this Order.

IT IS FURTHER ORDERED:

1. Plaintiff's Motion to Amend or Correct (ECF No. 20) is **DENIED**.
2. Plaintiff's federal claim is **DISMISSED** as frivolous under FED. R. CIV. P. 12(b)(1).
3. Defendant's Motion to Dismiss (ECF No. 6) is **GRANTED** to the extent Defendant seeks dismissal of the federal claim and **DISMISSED** without prejudice in all other respects.
4. Plaintiff's Motion to Take Deposition [29] is **DISMISSED** as moot.
5. Any remaining non-federal claims are **REMANDED** to Muskegon County Circuit Court.

Dated: September 14, 2017

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE